

Local Authority failed to require abatement of noise nuisance

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| Legislation | Ombudsmen Act 1975 |
| Agency | Local authority |
| Ombudsman | John Robertson |
| Case number(s) | C2194 |
| Date | 1992 |

Local Authority had not enforced a Transitional District Plan in respect of the use of a dwelling—complainant’s neighbour had been using his home property to repair racing cars and the noise detrimentally affected the neighbourhood—Ombudsman found the Council had failed to require abatement of a noise nuisance but then agreed to do so—complaint discontinued on basis of Council’s actions

The complainant believed that the Council had not taken any satisfactory steps to prevent a home being used for commercial purposes, in a residential area, and claimed that his neighbour at a residential address adjacent to his property was carrying on the business of repairing and preparing racing cars. The effect of the work being done on the complainant’s enjoyment of his property was significant. Grinding machinery was often in operation creating considerable noise and fibre-glassing was being carried out in the open. The noise would often begin in the early morning and continue until dark.

Council officers had visited the property on several occasions over a period of three years noting the type of work carried out, the extensions to garages and the installation of expensive machinery. When they interviewed the occupant at his home, he expressed the view that the work he was doing was a ‘hobby’ in terms of the then district scheme. He said he did not receive commercial gain from the work and that he was a racing car enthusiast of independent means.

The Ombudsman visited the site. It was apparent to the Ombudsman that the couple had been subjected for several years to a great deal of high pitched noise from their neighbour, which

appeared to be from uses which were not consistent with a residential zoning. Further enquiries were made about the factors involved. At this time, it was also found that the occupant was carrying on the business of hiring to the public racing cars and instructing in their use. In addition, he received considerable media coverage during an important national racing event which extolled the quality of the services he offered to racing drivers in respect of repairing their cars and preparing them for racing.

The Ombudsman advised the Council of the information received and the Council made some further enquiries. When those enquiries were completed the Council decided that there was a breach of the Transitional District Plan and that it would take the necessary steps to enforce the Plan and if necessary to make an application to the Planning Tribunal for an enforcement order. As the Ombudsman was satisfied the Council had recognised its enforcement role and was taking steps to both reduce the nuisance and enforce their Plan, the investigation was discontinued.

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